

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
	:
In re	:
	:
GINO J. HERNANDEZ,	:
	:
Debtor.	:
	:
-----X	

Chapter 11

Case No. 15-12968 (shl)

**ORDER ON DEBTOR’S MOTION TO CONTINUE THE AUTOMATIC
STAY PURSUANT TO 11 U.S.C. § 362(c)(3)(B), AND LANDLORD CREDITORS’
MOTION TO DISMISS DEBTOR’S CHAPTER 11 PETITION AND FOR SANCTIONS**

Upon the motion of Gino J. Hernandez (the “Debtor”), dated November 16, 2015, adjourned from the hearing held on December 4, 2015, seeking to Continue the Automatic Stay pursuant to 11 U.S.C. § 362(c)(3)(B), only with respect to leased premises at 3920 Broadway, New York, New York (Store #4) (the “Continuation Motion”),¹ and the opposition thereto of unsecured creditors 137 Broadway Associates, L.L.C., 164 Broadway Associates L.L.C., 180 Broadway Associates, L.L.C., and 145 Vermilyea Associates, L.P. (collectively, the “Landlord Creditors”); and

Upon the motion of Landlord Creditors, dated November 19, 2015, seeking to dismiss Debtor’s Chapter 11 petition on the grounds that Debtor’s second, successive bankruptcy filing

¹ Pursuant to this Court’s prior Order, dated December 4, 2015, on consent of Debtor and Landlord Creditors, the automatic stay was terminated, and lifted, as to the following Landlord Creditors and corresponding commercial leases pursuant to which Debtor is the tenant: (i) 137 Broadway Associates L.L.C., with respect to leased premises at 3379 Broadway a/k/a 602 West 137th Street, New York, New York (Store # 6), and at 602 West 137th Street, New York, New York (Store # 7); (ii) 180 Broadway Associates L.L.C., with respect to leased premises at 660 West 180th Street, New York, New York (Store # 7); and (iii) 145 Vermilyea Associates, L.P., with respect to leased premises 145 Vermilyea Avenue, New York, New York (Store # 1).

was undertaken in bad faith, and to impose sanctions against Debtor and Debtor's counsel (the "Motion to Dismiss"), and the opposition thereto of Debtor; and

Upon review of all motion papers and objections filed in connection with these motions, and following oral argument held on December 8, 2015, after due deliberation and sufficient cause existing therefor; it is hereby

ORDERED, that Debtor's Continuation Motion is hereby denied, as Debtor failed to rebut the presumption, by clear and convincing evidence, that Debtor's second bankruptcy filing was filed in bad faith; and it is further

ORDERED, that the automatic stay is hereby terminated, and lifted, as to all of Debtor's property, including, but not limited to, Debtor's leasehold interest in the remaining commercial premises, located at 3920 Broadway, New York, New York, leased from Landlord Creditor 164 Broadway Associates L.L.C. (Store #4). *The Court denies Debtor's request by letter of December 7, 2015 to include certain additional language in this order. The Debtor's letter raises an issue that is not implicated by the Landlord's proposed order-adopted by the Court-that addresses only the Debtor's property. Nor has the Debtor justified the additional language in light of the response provided by the Landlord in its letter of December 11, 2015. In any event, the issue now identified by Debtor was not timely raised, having never been discussed by the Debtor in its exceedingly modest written submissions on the motion or at any of the hearings, despite the fact that the Court continued the original hearing on the motion to allow the Debtor every opportunity to present its best case;* and it is further

ORDERED, that Landlord Creditors' Motion to Dismiss is denied, without prejudice to
renew and refile no sooner than within thirty (30) days hereof.

Dated: New York, New York
December 11, 2015

/s/ Sean H. Lane
United States Bankruptcy Judge